

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:07CV55-MU-1

RICKY NELSON SPENCER,

Plaintiff,

v.

TERRY ELMORE, et al.,

Defendants.

O R D E R

This matter is before the Court upon a Motion for Voluntary Dismissal, filed July 31, 2007, and a Motion for Leave to Amend Complaint, filed August 2, 2007.

On June 4, 2007, Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 with this Court. On June 7, 2007, after conducting an initial review, this Court dismissed Plaintiff's Complaint for failure to state a claim upon which relief could be granted. On June 15, 2007, Plaintiff filed a Notice of Appeal. Plaintiff's appeal is currently pending in the United States Court of Appeals for the Fourth Circuit.

The Court has now received a Motion for Voluntary Dismissal submitted and signed by Marion Beasley, Jr., an individual who states he was Plaintiff's counsel¹ and asking that the Court dismiss all documents filed in this case with his handwriting on them. Mr. Beasley is not a party to this action and may not request that it be dismissed. Moreover, this case is now pending at the Fourth Circuit and this Court no longer has jurisdiction to dismiss the case.

¹ The Court notes that Marion Beasley, Jr. is currently an inmate at Scotland Correctional Institution.

Two days later this Court received a motion by Plaintiff requesting leave to file an amended Complaint. As previously stated, Plaintiff's case has been dismissed. Consequently, Plaintiff's motion is denied as moot.

IT IS THEREFORE ORDERED THAT;

1. The Motion for Voluntary Dismissal is **DENIED**; and
2. Plaintiff's Motion for Leave to Amend is **DENIED**.

Signed: August 28, 2007

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

